



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION IX**  
**75 Hawthorne Street**  
**San Francisco, CA 94105**

**JUL 21 2015**

Ms. Ashley Boulton, Esq.  
Downey Brand LLP  
621 Capitol Mall, 18<sup>th</sup> floor  
Sacramento, CA 95814

Re: Freedom of Information Act Request EPA-R9-2015-008135

Dear Ms. Boulton:

This is in response to your Freedom of Information Act request, dated June 8, 2015, regarding:

1. Any and all correspondence pertaining to the State Water Resources Control Board's (SWRCB) memorandum regarding the "Withdrawal of Approval of the SWRCB Alternative Test Procedure for the Two-Concentration Test Design for NPDES Effluent Testing when using the Test of Significant Toxicity," dated May 12, 2015.
2. Any and all correspondence pertaining to the notice of withdrawal of approval of the ATP dated February 11, 2015.
3. Any and all correspondence pertaining to the United State District Court Eastern District of California's ruling in Southern California Alliance of POTWs, et al., v. United States Environmental Protection Agency, et al., Case No. 2:14-CV-01513-MCE-DAD, dated May 15 2015.
4. Any and all correspondence regarding the Test of Significant Toxicity and Chronic Toxicity.
5. Any and all correspondence with SWRCB or internally within USEPA regarding the SWRCB's draft Toxicity Policy and the proposed contents of the same.

We have completed the search and review of documents concerning items 1, 2, and 3 above. The request for assurance of payment sent to you on June 26, 2015 for the amount of \$1680.00 covers these items. Your response was received on June 30, thereby extending the deadline for production to July 22.

As Marcela von Vacano of the Office of Regional Counsel discussed with you on July 14, 2015, we began searching for documents responsive to items 4 and 5 but given the lack of specificity regarding the time period for these items, Ms. von Vacano contacted you to determine the scope of this search. She explained that without modification, we interpreted the request in items 4 and

5 to extend as far back as 2003 and involve search and review costs in the amount of approximately \$45,000. You explained that the request was not intended to be that broad and that the search should be limited to correspondence generated after February 11, 2015. We have begun this more limited search and will provide you with a revised cost estimate as soon as possible.

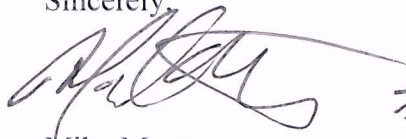
Responsive, releasable documents and an invoice have been uploaded to EPA's FOIAOnline system found at <https://foiaonline.regulations.gov/foia/action/public/home>. To access the documents, reference your FOIA request as EPA-R9-2015-008135.

We are unable to provide you with the documents, or portions of documents, which have been determined to be exempt from mandatory disclosure by virtue of 5 U.S.C. 552(b). An itemized list by categories of the withheld material along with the basis for withholding is provided on the enclosure to this letter.

You may appeal this partial denial to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, E-mail: [hq.foia@epa.gov](mailto:hq.foia@epa.gov). Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20004. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal may include as much or as little related information as you wish, as long as it clearly identifies the determination being appealed and includes the assigned FOIA request number EPA-R9-2015-008135). For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Given that this FOIA request is related to pending litigation, please contact Marcela von Vacano of the Office of Regional Counsel at 415-972-3905 if you have any questions concerning this matter.

Sincerely,

 7/21/15

Mike Montgomery  
Acting Division Director  
Water Division

Enclosure: Index of documents withheld



## **Freedom of Information Act Request EPA-R9-2015-008135**

### **Withheld Documents**

Below are the documents withheld in the above-referenced FOIA. The documents are identified by number and category are followed by the applicable exemption.

### **Documents Withheld in Full**

4 email chains among EPA Region 9 Office of Regional Counsel (ORC), Office of General Counsel (OGC) and U.S Department of Justice (DOJ) regarding ATP withdrawal letter, dated February 5-13, 2015

FOIA Exemption 5 (attorney work product, attorney client privilege)

1 email from OGC to ORC and DOJ regarding ATP withdrawal letter, dated February 10, 2015

FOIA Exemption 5 (attorney work product, attorney client privilege)

1 email from ORC to DOJ regarding ATP withdrawal letter, dated February 13, 2015

FOIA Exemption 5 (attorney work product, attorney client privilege)

3 email chains among EPA Region 9 Water Division and EPA Office of Water, ORC and OGC regarding ATP withdrawal letter to the State, dated February 11, 2015

FOIA Exemption 5 (deliberative process, attorney work product, attorney client privilege)

1 email chain among ORC, OGC, DOJ, and EPA Region 9 Water Division regarding May 15 2015 United State District Court Eastern District of California's ruling in Southern California Alliance of POTWs, et al., v. United States Environmental Protection Agency, et al., Case No. 2:14-CV-01513-MCE-DAD, dated May 18, 2015

FOIA Exemption 5 (attorney work product, attorney client privilege)

1 email chain among ORC and Region 9 Water Division regarding May 15 2015 United State District Court Eastern District of California's ruling in Southern California Alliance of POTWs v. United States Environmental Protection Agency, Case No. 2:14-CV-01513-MCE-DAD, dated May 18, 2015

FOIA Exemption 5 (attorney work product, attorney client privilege)

3 email chains among ORC attorneys regarding May 15 2015 United State District Court Eastern District of California's ruling in Southern California Alliance of POTWs v. United States Environmental Protection Agency, Case No. 2:14-CV-01513-MCE-DAD, dated May 19, 2015

FOIA Exemption 5 (attorney work product)

1 draft chart entitled "Toxicity Testing Analytical Pathways"

FOIA Exemption 5 (deliberative process, attorney client privilege)

4 email chains among ORC and Region 9 Water Division regarding withdrawal letter to the State, dated February 11, 2015

FOIA Exemption 5 (deliberative process, attorney work product, attorney client privilege)

1 email from ORC to Region 9 Water Division regarding withdrawal letter to the State, dated February 12, 2015

FOIA Exemption 5 (deliberative process, attorney work product, attorney client privilege)

1 email from ORC to Region 9 Water Division regarding withdrawal letter to the State, dated February 12, 2015

FOIA Exemption 5 (deliberative process, attorney work product, attorney client privilege)

2 emails among ORC and Region 9 Water Division regarding withdrawal letter to the State, dated February 12, 2015

FOIA Exemption 5 (deliberative process, attorney work product, attorney client privilege)

1 email from Region 9 Water Division to ORC regarding San Jose Creek NPDES permit, dated March 5, 2015

FOIA Exemption 5 (deliberative process, attorney client privilege)

1 email among Region 9 Water Division staff regarding draft toxicity chart, dated March 11, 2015

FOIA Exemption 5 (deliberative process)

1 email from Region 9 Water Division to ORC regarding Test Drive Input and attached CASA ATP letter, dated March 10, 2015

FOIA Exemption 5 (deliberative process, attorney client privilege)

9 email chains among ORC, OGC, DOJ, EPA Region 9 Water Division and EPA Office of Water regarding May 1, 2015 United State District Court Eastern District of California's ruling in Southern California Alliance of POTWs, et al., v. United States Environmental Protection Agency, et al., Case No. 2:14-CV-01513-MCE-DAD, dated May 15-20, 2015

FOIA Exemption 5 (attorney work product, attorney client privilege)

10 email chains among ORC, OGC, DOJ, and EPA Region 9 Water Division regarding SCAP's Motion for reconsideration and May 12, 2015 State Water Resources Control Board's (SWRCB) memorandum regarding the "Withdrawal of Approval of the SWRCB Alternative Test Procedure for the Two-Concentration Test Design for NPDES Effluent Testing when using the Test of Significant Toxicity"

FOIA Exemption 5 (attorney work product, attorney client privilege)

57 pages of attorney notes, dated February-June 2015

FOIA Exemption 5 (attorney work product)

## **Redacted Documents**

1 email dated May 15, 2015 containing personal email address; address redacted, remainder and attachment released

FOIA Exemption 6 (personal privacy)

1 draft State Water Resources Control Board's (SWRCB) memorandum regarding the  
"Withdrawal of Approval of the SWRCB Alternative Test Procedure for the Two-Concentration  
Test Design for NPDES Effluent Testing when using the TST" dated April 2015; attorney notes  
redacted

FOIA Exemption 5 (attorney work product, attorney client privilege)



